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ABSTRACT

Beginning with the Higher Education Amendments of 1968, Congress has attached anti-disruption provisions to various appropriation bills affecting higher education. These provisions are generically aimed at denying federal and support funds to persons involved in campus disruptions. The programs affected by this legislation are: (1) the Student Loan Program; (2) the Educational Opportunity Grants Program; (3) The Student Loan Insurance Program; (4) the College Work-Study Program; and (5) any fellowship program carried under Title II, III, or V of the Higher Education Act of 1965 or Title IV or VI of the National Defense Education Act of 1958. (HS)

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STUDENT UNREST

&

CAMPUS DISORDERS

STUDENT FINANCIAL AID REGULATIONS

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INTRODUCTION

Beginning with the Higher Education Amendments of 1968, Congress has attached anti-disruption provisions to various appropriation bills affecting higher education. These provisions are generically aimed at denying federal and/or support funds to persons involved in campus disruptions.

A recent Office of Education report indicated that forty students had lost federal financial aid funds in Fiscal Year 1970 by reason of violation of such provisions. Representative Edith Green (D.-Ore.), Chairman of the House Special Subcommittee on Education, asserted in a speech before the House of Representatives that the statistic indicated " an almost complete disregard by major institutions of education in this country of legislation enacted by this Congress."

The determination of Mrs. Green and a majority of Congress to continue to write into law even stronger and more comprehensive anti-disruption provisions and to see them enforced will doubtless mean severe cutbacks in future grants of financial aid funds to institutions which are not scrupulous in their adherence to such provisions.

For this reason, we have culled from recent Department of Health, Education and Welfare advisory bulletins the provisions currently operative and present them with comments that are a blend of our own and Department of Health, Education and Welfare thinking. We hope we have thus provided for those concerned with disciplinary proceedings a sound first step in understanding these anti-disruption provisions as they affect our university.

In addition to the related readings indicated, we urge regular attention to two periodicals:

The College Counsel, issued by the National Association of College and University Attorneys, 625 Grove Street, Evanston, Illinois 60201.

College Law Bulletin, issued monthly by the U.S. National Student Association, 2115 S Street, N.W., Washington, D.C. 20008.

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STUDENT UNREST & CAMPUS DISORDERS

FINANCIAL AID REGULATIONS

A. SECTION 504, P.L. 90-575

Section 504(a) of the Higher Education Amendments of 1968 (P.L. 90-575) provides in part that:

> *"If an institution of higher education determines, after affording notice and opportunity for hearing to an individual attending, or employed by, such institution, that such individual has been convicted by any court of record of any crime which was committed involving the use of (or assistance to others in the use of) force, disruption, or the seizure of property under control of any institution of higher education to prevent officials or students in such institution from engaging in their duties or pursuing their studies, and that such crime was of a serious nature and contributed to a substantial disruption of the administration of the institution with respect to which such crime was committed, then the institution which such individual attends, or is employed by, shall deny for a period of two years any further payment to, or for the direct benefit of, such individual under any of the programs specified in subsection (c)."*

Section 504(b) provides:

> *"If an institution of higher education determines, after affording notice and opportunity for hearing to an individual attending, or employed by, such institution, that such individual has willfully refused to obey a lawful regulation or order of such institution after the date of enactment of this Act, and that such refusal was of a serious nature and contributed to a substantial disruption of the administration of such institution, then such institution shall deny, for a period of two years, any further payment to, or for the direct benefit of, such individual under any of the programs specified in subsection (c)."*

In addition, Section 504(d) of the Act includes the following disclaimers:

> *"(1) Nothing in this Act, or any Act amended by this Act, shall be construed to prohibit any institution of higher education from refusing to award, continue, or extend any financial assistance under any such Act to any individual because of any misconduct which in its judgment bears adversely on his fitness for such assistance.*

(2) Nothing in this section shall be construed as limiting or prejudicing the rights and prerogatives of any institution of higher education to institute and carry out an independent, disciplinary proceeding pursuant to existing authority, practice, and law.

(3) Nothing in this section shall be construed to limit the freedom of any student to verbal expression of individual views or opinions."

COMMENT

The programs which this act specifies, and which are affected by similar programs in other acts are:

1] The Student Loan Program (Title II of the National Defense Education Act of 1958).
2] The Educational Opportunity Grants Program (Part A of Title IV of the Higher Education Act of 1965).
3] The Student Loan Insurance Program (Part B of Title IV of the Higher Education Act of 1965) insofar as loans guaranteed under the program are made by an institution of higher education.
4] The College Work-Study Program (Part C of Title IV of the Higher Education Act of 1965).
5] Any fellowship program carried under Title II, III, of V of the Higher Education Act of 1965 or Title IV or VI of the National Defense Education Act of 1958.

Three critical points must be noted:

1] The statute makes no provison for revocation or suspension of a two-year sanction imposed on the basis of 504(a) or (b), even should the university wish to revoke or suspend the sanction;
2] Action taken by any institution under 504(a) binds any other institution to which the student in question may transfer, and information regarding the action must be transmitted to the institution to which the student transfers;
3] Records establishing the basis for any action taken under 504 (a) or (b) and stipulating the date of commencement of any sanction must be maintained by the university.

In determining the nature, intent, and effects of the crime or refusal to obey a lawful institutional regulation or order, and in determining also whether the individual was convicted by a "court of record," recourse to legal counsel may be helpful.

B. SECTION 411, P.L. 90-557

Section 411 of the Department of Health, Education & Welfare Appropriation Act of 1969 (P.L. 90-557) provides that:

> *"No part of the funds appropriated under this Act shall be used to provide a loan, guarantee of a loan or a grant to any applicant who has been convicted by any court of general jurisdiction of any crime which involves the use of or the assistance to others in the use of force, trespass or the seizure of property under control of an institution of higher education to prevent officials or students at such an institution from engaging in their duties or pursuing their studies."*

COMMENT

It should be noted that these three provisions operate in a somewhat dissimilar fashion. Thus, Section 504(a) and 504(b) literally apply only "if" the institution in question makes certain specified determinations as stated. In contrast, the operation of Section 411 as a restriction on the use of appropriated funds is automatic if a conviction of the sort described in that section has occurred. Again, Section 504(a) and 504(b) apply to assistance under the particular education programs listed in Section 504(c); Section 411 covers all relevant programs funded under the 1969 appropriation act. Some programs, are, of course, concurrently affected by both Sections 411 and 504, and in these cases conflict and confusion between the two provisions may arise. A few examples will suffice.

Section 504(a) and Section 411 turn on the conviction of an individual program beneficiary (student, fellow, etc.) of a crime. However, the crime, or the criminal conduct, the identity of the convicting court, the procedural incidents, and the consequences of an adverse finding are treated differently in these Sections. Thus:

1] Section 504(a) requires a conviction by "any court of record;" Section 411, a conviction by "any court of general jurisdiction."
2] Under Section 504(a), "notice and opportunity for hearing" must be provided the offending student; Section 411 does not comment on such procedures.
3] Crimes punishable under Section 504(a) are those committed after the date of enactment of that Section; Section 411 contains no such specific limitation (although it admits of such a construction).
4] Section 411, mentions trespass as such, while Section 504(a) refers simply to "disruption."

5] Under Section 504(a), the crime must be found to have been "of a serious nature" and to have "contributed to a substantial disruption of the administration of the institution with respect to which such crime was committed"; under Section 411, other findings are required.

6] Under Section 504(a), an adverse determination requires termination of assistance for a two year period; under Section 411, no such limitation is provided and the assistance (out of funds appropriated by P.L. 90-557) can never be reinstated.

C. SECTION 407, P.L. 91-204

Section 407 of the Departments of Labor and Health, Education & Welfare Appropriations Act, 1970 (P.L. 91-204) states:

> *"No part of the funds appropriated under this Act shall be used to provide a loan, guarantee of a loan, a grant, the salary of or any remuneration whatever to any individual applying for admission, attending, employed by, teaching at, or doing research at an institution of higher education who has engaged in conduct on or after August 1, 1969, which involves the use of (or the assistance to others in the use of) force or the threat of force or the seizure of property under the control of an institution of higher education, to require or prevent the availability of certain curriculum, or to prevent the faculty, administrative officials, or students in such institution from engaging in their duties or pursuing their studies at such institution.*

This provision also appears as Section 205 of the Office of Education Appropriations Act of 1970 (P.L.-380).

COMMENT

These provisions apply to a somewhat broader range of persons than earlier such provisions, clarify and extend the definition of types of behavior involved, and omit any mention of the individual's right to due process by either civil courts or the institutions involved. For these reasons, they place an even greater burden upon universities.

D. OTHER PROVISIONS

The Independent Offices and Department of Housing and Urban Development Appropriation Act, 1969 (P.L. 90-550), in appropriating funds

for the National Science Foundation, contains a proviso, directed to institutions of higher education receiving funds under that appropriation, having language similar to that of Section 504(b) of the Higher Education Amendments except that denial of payments is not limited to a two year period though presumably limited to use of the funds appropriated by that Act to NSF. On the other hand, the Department of Defense Appropriation Act, 1969 (P.L. 90-580, Sec. 540), which appropriates funds for a variety of defense-related university research, development, and other activities, contains a provision identical to that of Section 411 of the Departments of Labor and Health, Education and Welfare Appropriation Act, 1969, quoted above.

E. ACT 116, PENNSYLVANIA HOUSE BILL 176, 1969

This Act amends the 1963 law creating the Pennsylvania Higher Education Assistance Agency and specifies:

> *"Each institution of higher education shall immediately furnish to the agency, the name and addresses of any student who is expelled, dismissed, or denied enrollment . . . or of whom the institution of higher education has knowledge that he has been convicted of offenses (relative to disruptive activities)."*

COMMENT

In order to maintain the eligibility of Pennsylvania students at this university for state funds, we have reluctantly pledged compliance with this statute.

/dmw

Related Reading

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